IN THE

Supreme Court Of The United States

OCTOBER TERM, 1971

No. 71-1016

FEDERAL POWER COMMISSION, *Petitioner*

v.

LOUISIANA POWER & LIGHT COMPANY, ET AL.

No. 71-1040

UNITED GAS PIPE LINE COMPANY AND PENNZOIL UNITED, INC., *Petitioners*

v.

LOUISIANA POWER & LIGHT COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

AMICUS CURIAE BRIEF FOR THE ARKANSAS PUBLIC SERVICE COMMISSION

APPENDIX

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF INDUSTRIAL)		
CONTRACTS OF ARKANSAS	)	DOCKET NO.
LOUISIANA GAS COMPANY	)	U-2307

OPINION AND ORDER

A. *PROCEDURAL HISTORY*

This proceeding commenced December 11, 1970, when the Arkansas Public Service Commission (The Commis-

sion) issued a Show Cause Order to Arkansas Louisiana Gas Company (Arkla) and to each large industrial gas customer served by Arkla under sales contracts individually negotiated between Arkla and each industry and submitted to the Commission for approval. The Commission, with a few exceptions, had approved these sales contracts, as reflected by an Order issued after a hearing on each application.

The Show Cause Order directed Arkla and each Industrial Respondent to appear before the Commission for public hearing to show cause why the Commission should not set aside its Orders approving each of the negotiated sales contracts. Arkla was required in the same proceeding to show cause why it should not be ordered to file General Industrial Tariffs with the Commission, under which all industrial customers could receive natural gas service.

The recitation in the Commission's Show Cause Order of those conditions requiring it to commence the proceeding included:

1. The increasing curtailments of natural gas experienced by the large industrial customers and the prospects that such curtailments would grow in the immediate future;

2. The threat that the imbalance between gas demand and supply would result in a rapid depletion of gas reserves which might threaten the gas supply available for human needs; and,

3. The absence of a coherent and equitable curtailment policy on file with the Commission.

The Commission observed that these matters were of great moment to Arkansas and noted that a reasonably forseeable

future increase in Arkla's gas costs made it incumbent to decide whether such increased costs could be ratably distributed to all classes of gas customers. The Commission also noted the National concern over gas supplies and those calls by the Executive Branch of the United States Government for state and federal regulatory agencies with jurisdiction and responsibility in public energy distribution systems to commence dealing with energy shortage problems.

Arkla's Response to the Show Cause Order revealed its position to be that no cause could be demonstrated why the Commission's Orders approving negotiated contracts should not be rescinded. Arkla further alleged that some provisions of certain large volume industrial gas sales contracts were injurious to its ability to acquire additional gas reserves and that these provisions made it impossible to establish reasonable curtailment priorities among large industrial customers. Responses by the industrial buyers were generally consistent in questioning the Commission's jurisdiction to amend or rescind its prior Orders of approval, and that the Commission's established procedure of private negotiation, submission of the resulting contract to the Commission, and Commission approval of same after hearing, was satisfactory. The industrial buyers also asserted that the composite and individual results of the procedure were desirable and in the public interest, and produced either no injury to Arkla or were insufficiently injurious to Arkla to create a serious danger to gas utility service needs of the people of Arkansas.

Arkla served its testimony and exhibits on the Commission and the respondent industries. The direct testimony of Arkla's witnesses, together with clarifying questions and responses during the hearings totaled 223 pages

of transcript. The responding large industrial customers requested additional time to file testimony and exhibits and to prepare for cross-examination of Arkla's witnesses. The Commission granted this additional time in the interest of procedural fairness, in that Arkla's direct evidence was uniquely at its disposal, since Arkla had familiarized itself with much of the relevant evidence in preparation for recent proceedings before the Federal Power Commission and also because many of the respondent large industrial customers could not fairly be expected to speedily prepare evidence for a hearing by a regulatory tribunal before which they had not heretofore appeared.

Cross-examination of Arkla's witnesses commenced on February 15, 1971, and, with short recesses, concluded on March 18, 1971. This exhaustive cross-examination by 10 of the responding large industrial buyers and the Commission's staff, together with questions from the bench by members of the Commission comprise approximately 2523 pages in the hearing transcript. Direct evidence was served on April 1, 1971, by some large industrial buyers which comprise approximately 250 pages with the entire transcript totaling 4359 pages. Arkla and the Commission staff cross-examined the industrial witnesses from April 29th, to May 5th, 1971, at which time the longest proceeding in the history of the Arkansas Public Service Commission concluded. Including the briefs simultaneously filed on June 18, 1971, by those parties electing to do so, the supplemental information required of various parties during the course of the proceedings, and the Commission records of earlier relevant cases which were incorporated by reference, the Commission had before it approximately 10,000 pages of material pertaining to the case.

B. *THE CURRENT STATUS OF ARKLA'S GAS SUPPLY*

1. The supply of natural gas available to Arkla is inadequate to take care of the requirements of its existing customers. The record shows that the volumes of gas which Arkla can obtain from its various production sources, purchases from gas producers and pipeline companies is insufficient to meet the normal peak demands of its customers and their annual requirements necessitating curtailments far in excess of those experienced during cold weather periods in prior years. For its Ark-La-Tex integrated system, Arkla's peak day deficiency is estimated to reach 808,500 Mcf in the 1971/1972 and 849,600 Mcf in the 1972/1973 winter heating seasons. The estimated annual deficiency of supply amounts to 50,615,000 Mcf for 1971, 114,594,000 Mcf for 1972 and 162,450,000 Mcf for 1973. These annual deficiencies represent 10.39%, 23.02%, and 32.16% respectively of the total requirements and 14.39%, 31.71% and 44.18% respectively of the requirements of Arkla's main line industrial customers.

No convincing challenge has been made by any party to these proceedings to the evidence submitted by Arkla demonstrating that its existing gas supply is critically short and incapable of supplying the requirements of the residential, commercial and other human needs customers in the future without making drastic curtailments in the deliveries of gas to its industrial customers.

The shortage of gas supply is not unique to Arkla. It is of national proportion, and is of such magnitude and involves such dire consequences as to have generated remedial action at both the federal and state levels. As the Commission pointed out in its Order of December 11, 1970, the dimensions of the present scarcity of natural gas was

not forecast until some two years ago. The evidence shows that Arkla's officials, while aware of the possibility of an impending shortage, did not recognize its depth and serious consequences until sometime in 1970. Moreover, during that intervening period of time, the Company aggravated the situation by attaching additional industrial customers to its system having total daily requirements of 34,160 Mcf. On March 11, 1971, Arkla advised the Commission of its intention not to serve new industrial customers either under contract or presently filed tariffs.

Arkla, in May, 1970, filed an application with the Federal Power Commission for a certificate to construct and operate a large diameter natural gas pipeline into the Deep Anadarko Basin of Oklahoma and the Texas Panhandle to secure additional gas reserves for customer requirements. Arkla received a favorable decision from the Presiding Examiner on June 29, 1971, with respect to the first phase of the project. The Examiner's decision is now pending before the full Federal Power Commission.[1] The Arkansas Commission, along with the regulatory commissions of other states served by Arkla, has supported this endeavor of Arkla to augment its gas supply. A favorable decision by the Federal Power Commission in the near future is hoped for by Arkla, this Commission, and Arkla's customers. However, even assuming near term approval, it is doubtful that the Anadarko gas will be available until the 1972/1973 heating season.

In the meantime, Arkla intends to attach such additional gas reserves in its existing supply areas as can be secured. Arkla is in the process of developing the Ruston storage field which will provide an additional source of gas to meet its winter peak demands. It is also requesting the

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1 FPC Docket No. CP70-276

Federal Power Commission to grant it relief from its contractual commitments to supply gas to two interstate pipeline companies at times when gas is needed to supply the human needs requirements of its Arkansas customers.[2]

Despite the possible success of these several efforts to improve the deliverability of the Arkla system so that it can supply the anticipated requirements of its customers, the magnitude of such possible improvements in gas supply will be insufficient to avoid massive curtailments during the coming winter heating season. It is with the difficult problem inherent in curtailment priorities that the Commission must take action in order to protect the interests of Arkansas citizens who depend on a supply of gas for space heating, cooking, water heating, and other human needs requirements.

COMMISSION JURISDICTION TO RESCIND OR AMEND PRIOR ORDERS:

2. By action of the Arkansas Legislature, the Public Service Commission was entrusted with the power and jurisdiction to regulate and supervise public utilities serving the people of Arkansas, and ". . .to do all things. . .that may be necessary or expedient in the exercise of such power and jurisdiction."[3] Specific authority, subject only to procedural fairness, was given the Commission to ". . .at any time, and from time to time, . . . rescind or amend any decision made by it."[4] The jurisdiction of the Commission to amend or rescind any prior order approving industrial gas

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[2] FPC Docket No. RP71-122

[3] Ark. Stat. Ann. 73-202

[4] Ark. Stat. Ann. 73-230

contracts was strongly challenged during the course of the hearing in this case and extensively argued in briefs. A number of large industrial customers argued that Act 4 of 1965[5] (hereinafter "Act 4") repealed, by implication, the Commission's power to review its Orders and Findings insofar as this particular class of utility consumers is concerned. Act 4, in it entirety, reads as follows:

> "Public utilities are authorized to contract for sale, on an interruptible basis, of utility services at agreed prices for a definite term not to exceed twenty-five (25) years with customers whose use of such service is for manufacturing, generation, processing, preparation of products, or industrial purposes; provided that such contracts shall be subject to approval by the public Service Commission before becoming effective. Such contracts, after approval by the Commission, shall continue in full force and effect for the term thereof."

For the reasons set out in the following discussion and on the basis of its findings in this proceeding, the Commission rejects the argument that the Legislature intended to create a preferential class of utility consumer who would be insulated from regulatory scrutiny for as much as a twenty-five year period. Accordingly, the Commission hereby asserts its statutory power to amend or rescind its prior approval of long term industrial contracts upon a showing that the public interest so demands.

It should be noted at the outset that Act 4 cannot be regarded as applicable to all Commission Orders reviewed in this proceeding. Those contracts entered into and approved

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[5] Ark. Stat. Ann. 73-275 (1969 Supp.)

prior to the effective date of Act 4[6] cannot be deemed subject to its alleged preferential effect. If the Commission adopted the argument of the large industrial customers that once Commission action occurred, such agreements were sacrosanct for their entire term (which, as indicated, could be up to 25 years), then the Legislature manifestly could not have intended to retroactively insulate contracts approved prior to Act 4, when the Commission was unaware of the long-term implication of its Orders. Another category of large industrial customers are those customers who have renegotiated contracts since Commission ap-

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[6] Act 4, with its Emergency Clause, became effective January 25, 1965, with the signature of the Governor. Orders approving contracts prior to this date are:

CUSTOMER	DOCKET NO.
Arkansas Chemicals, Inc.	U-1673
Arkansas Elec. Co-op Corp. Augusta	U-1819
Arkansas Elec. Co-op Corp. Ozark	U-1583
Arkansas Power & Light Co. H. Spgs., NLR, Stamps, Helena	U-1443
	U-1383
Columbian Carbon	U-1476
Continental Oil Company	U-1850
Monsanto Company	U-1444
United States of America Pine Bluff Arsenal	U-1282

proval.[7] Such renegotiated contracts are not the same contracts approved earlier by the Commission, and, insofar as the Commission is concerned, such contracts in their renegotiated form are again subject to Commission scrutiny. Consequently, the following discussion of Act 4 relates essentially to those contracts negotiated and approved after the effectiveness of Act 4, which have not subsequently

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[7] Renegotiations have apparently taken place on contracts initially approved in the following Dockets:

NAME OF COMPANY	DOCKET NO.	DATE OF AMENDMENT
Aluminum Co. of America	U-1945	July 30, 1970
Ark. Elec. Co-op Corp. Camden	U-2070	June 9, 1970
Ark. Elec. Co-op Corp. Ozark	U-2071	June 9, 1970
Ark. Elec. Co-op Corp. Augusta	U-2072	June 9, 1970
Arkla Chemical Corp. Helena	U-1891	October 16, 1970
Arkla Chemical Corp. Gurdon	U-1987	November 3, 1970
Ark. Cement Corp.	U-1477	October 26, 1970
Ark. Chemicals, Inc.	U-1673	January 26, 1970
Benton Light Imp. Dist. 1	U-1985	December 16, 1969
Great Lakes Chem. Corp.	U-1955	January 19, 1970
Malvern Brick & Tile Co.	U-1948	January 23, 1970
Minn. Mining & Mfg. Co.	U-1949	February 12, 1970
Nekoosa-Edwards Paper Co.	U-2036	May 20, 1970

been renegotiated,[8] i.e., does this Commission have the jurisdiction to withdraw its prior approval of such contracts?

THE POLICE POWER OF THE STATE

It is no longer open to question, in the face of the consideration given the issue by numerous courts, that a contract between a public utility and a consumer is subject to the police power of the State, and must fall where the public interest so demands.[8] The United States Supreme Court has long since ruled that a State may exercise its police power to regulate public utilities and fix rates, notwithstanding that the effect may be to modify or abrogate pri-

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FOOTNOTE 8
These contracts were approved by Orders issued in the following Dockets:

CUSTOMER	Contract Date	APSC Docket	Date PSC Order
After January 25, 1965			
Acme Brick Company	1-26-66	U-1961	3-26-66
Aluminum Co. of America	12-30-65	U-1945	2- 3-66
American Oil Company	2-28-66	U-2000	7-14-66
Ark. Electric Coop. Corp. Camden	6- 1-67	U-2070	7-18-67
Ark. Electric Coop. Corp. Augusta	6- 1-67	U-2072	7-18-67
Ark. Electric Coop. Corp. Ozark	6- 1-67	U-2071	7-18-67
Arkansas Kraft Corp.	9-27-65	U-1967	3-22-66
Ark. Lightweight Aggreg. Corp.	1-21-66	U-1960	3-22-66
Arkansas Power & Light Co. Helena	5-13-65	U-1892	5-19-65
Arkansas Power & Light Co. Hot Springs	10-13-66	U-2025	11-20-66
Arkansas Power & Light Co. Helena	4-20-70	U-2272	9- 4-70
Arkansas Power & Light Co. Mabelvale	4-20-70	U-2271	9- 4-70

(FOOTNOTE 8 continued)

Arkla Chemical Corp. Gurdon	4- 6-66	U-1987	5-24-66
Arkla Chemical Corp. Helena		U-1891	5-19-65
Baroid Division, Nat'l. Lead Co.	12-29-65	U-1950	2- 3-66
Benton Light Impr. Dist. No. 1	3-15-66	U-1985	5-24-66
Berry Petroleum Company Stephens	12-29-65	U-1952	2- 3-66
Berry Petroleum Company Waterloo	12-29-65	U-1951	2- 3-66
Bromet Company	1-27-69	U-2192	6- 9-69
The Celotex Corporation	3-18-66	U-1986	5-24-66
Conway Light, Power & Water	9-23-66	U-2032	12-29-66
Cross Oil & Ref. Co. of Ark.	12-30-65	U-1953	2- 3-66
Dierks Div., Weyerhaeuser Co. Pine Bluff & Perkins	3- 4-66	U-1983	5-24-66
Dierks Div., Weyerhaeuser Co. Dierks	7-10-69	U-2223	12- 5-69
Great Lakes Chemical Corp.	1-12-66	U-1955	3-22-66
A.P. Green Refractories Co.	12- 9-65	U-1963	3-22-66
Ideal Cement Company	12-15-69	U-2269	9- 4-70
International Paper Company Pine Bluff, Camden, Malvern	1- 1-66	U-1962	5-24-60
MacMillan Ring-Free Oil Co.	12-10-65	U-1947	2- 3-66
Magnet Cove Barium (Dresser Magcobar, Div. of Dresser, Inc.)	1-11-66	U-1954	2- 3-66
Malvern Brick & Tile Co.	12-15-65	U-1948	2- 3-66
Minnesota Mining & Mfg. Co.	12-28-65	U-1949	2- 3-66
Monsanto Company	12-16-66	U-2038	12-29-66
Nekoosa Edwards Paper Co.	12- 7-66	U-2036	12-29-66
Olinkraft, Inc.	6-25-69	U-2221	12- 5-69
Humble Oil & Refining Co. Phillips Petroleum Co.	11- 1-65	U-1966	5-24-66
Remington Arms Co., Inc.	6- 4-69	U-2222	12- 5-69
Reynolds Metals Co. Bauxite, Lake Catherine & H.S.	1- 1-66	U-1965	5-24-66
Reynolds Metals Co. Arkadelphia	1- 1-66	U-1964	5-24-66
Union Carbide Corp.	12- 7-66	U-2037	12-29-66

vate contracts.[9] The Arkansas Supreme Court has characterized the power to regulate rates of public utilities as:

> ". . .an inherent attribute of police power or sovereignty existing in the State, which may be exercised at any time through any state agency for the purpose of establishing just, equitable and reasonable rates under such circumstances as may exist at the time. It is . . an attribute of sovereignty . . . in contemplation of which all contracts and agreements must be made."[10]

THE COMMISSION'S OBLIGATION TO INTERPRET ITS LEGISLATION AS CONSTITUTIONAL AND REASONABLE

It is inevitable that where legislation could be construed, as some large industrial customers have so construed Act 4, as yielding up a fundamental attribute of governmental sovereignty, the question of the constitutionality of the legislation arises. This Commission has not had past occasion to take a position on whether it should make a determination of the constitutionality of legislative enactments dealing with its duties. It is, however, the opinion of the Commission that it lacks both the power and the special competence to rule on the constitutionality of legislation and regards any effort to do so by an agency which is a creature of the legislature as a violation of the institutional proprieties of the relationship.[11]

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9 **Producers Transp. Co. v. Railroad Commissions,** 251 US 228; **Union Dry Goods Co. v. Georgia Public Serv. Corp.,** 248 US 372; **Pipe Line Cases,** 234 US 548; **Louisville & N.R. Co. v. Mottley,** 219 US 467; **Munn v. Illinois,** 94 US 11.

10 **Camden v. Arkansas Power & Light Co.,** 145 Ark. 205; **Clear Creek Oil & Gas Co. v. Fort Smith Smelter Co.,** 148 Ark. 260.

11 DAVIS, ADMINISTRATIVE LAW TREATISE, Vol. 1, Sec. 20.04

However, two fundamental and interrelated principles of interpretation of legislation are here concerned. One, the "Golden Rule of Statutory Interpretation"[12] is that where alternative constructions of a statute are possible, the reasonable interpretation must prevail over the unreasonable and the constitutional alternative over the unconstitutional. The other principle is that an administrative agency has a duty to construe and determine the applicability of a statute so as to avoid attacks on both its reasonableness and its constitutionality.[12] Applied to the Commission's interpretation of Act 4, these principles compel it to determine the most reasonable and least constitutionality vulnerable application. The interpretation pressed by the large industrial customers is neither the most reasonable nor the most constitutionally acceptable, and is rejected. To construe Act 4 as repealing, by implication, the Commission's powers to review its Orders would require the Commission to defend, as "reasonable", a construction which places some 70% of the sales of Arkla beyond the continuing review essential to effective regulation. [13] The Commission finds that the General Assembly did not surrender its police power to regulate public utilities, nor curtail the Commission's jurisdiction for any length of time or any term of years, by the enactment of Act 4 of 1965.

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12 DAVIS, **ante.**

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For the Commission to presume the Legislature intended to confer upon this class of utility consumers special rights might place Act 4 in conflict with specific provisions of the Arkansas Constitution. ARK. CONST., Art. 17 established limitations on the General Assembly with respect to its enactments relating to railroads, canals, and turnpikes, the "public utilities" of the day. However, Sec. 9 of that article, prohibiting the Legislature from abridging the State's right of eminent domain, was assumed by the Arkansas Supreme Court to be applicable where the utility in question was a water company. **City of Helena v. Ark. Utilities Co.,** 208 Ark. 443, 186 S.W.

(FOOTNOTE 13 continued)

2d 783 (1945). Article 17, Section 10 (as amended by Amend. 2), directed the General Assembly to ". . . pass laws to correct abuses and prevent unjust discrimination and excessive charges . . ." of railroads, canals, and turnpike companies, and to create ". . . such authority as shall be necessary to carry into effect the powers hereby conferred."

Early Arkansas regulatory commissions were duly established — See Generally THE GROWTH OF UTILITY REGULATIONS IN ARKANSAS: A FUNCTIONAL SURVEY, 21 Ark. L. Rev. 539 (1968); and in **Helena Water Co. v. Helena,** 140 Ark. 597, 216 SW 26 (1919), an Act which expanded the power of the Arkansas Corporation Commission to regulate water, gas, street car, and telephone companies, was upheld as authorized under Sec. 10, and the new Commission was to apply the same power to correct abuses. A subsequent restructuring of utility regulatory agencies, which specified that the Commission should be empowered to regulate all public service corporations, companies, and utilities was deemed in **Southeast Arkansas Freight Lines, Inc. v. Arkansas Corporation Commission,** 204 Ark. 1023, 166 SW2d 262 (1942), as legislative response to the "constitutional mandate" of Art. 17, Sec. 10 (as amended by Amend. 2).

The principle established by these cases is that of judicial recognition that the 1898 constitutional language, which listed those public utilities of the moment, established a constitutional policy applicable to public utilities as they became identified as such, and that ". . . the rule of exclusion of those things not expressed does not apply." **Helena Water Company, supra,** at 605.

For this Commission to construe Act 4 as an effort by the General Assembly to withdraw from this administrative agency and future legislatures the power to correct abuses and discrimination would be improperly assuming a legislative intent squarely contrary to Arkansas constitutional policy.

THE REASONABLE AND CONSTITUTIONAL PURPOSE OF ACT 4

The judicial and legislative background against which Act 4 must be viewed demonstrates that the Arkansas General Assembly intended a measure which would act intersticially to clarify a matter of interest to industries and gas companies alike.

Early opinions by the Arkansas Supreme Court raised serious questions as to the extent either party to a contract between an industry and a public utility was bound by the contractual provisions. In *Harrison Electric Company v. Citizens Ice & Storage Co.*, 149 Ark. 502, 232 SW 932 (1921), an industrial utility customer had executed a contract with a public utility with a specific rate. The utility subsequently and unilaterally filed a schedule with the Commission which increased this rate, giving no notice of the change to the customer. The Arkansas Court held that filing with the Commission constituted adequate notice, and that since the statute had been satisfied, the new rates superseded any contractual rates theretofore established between the parties. The Court held, at p. 507, that "There could be no valid contract as against the power of public control of the Commission."

Other Arkansas cases, with strong observations on the limitations on the power of public utilities to make contracts have left further doubt on whether such contracts were worth anything.[14]

The issue came to national attention in *United States Gas Pipe Line Co. v. Mobile Gas Corporation*, 350 US 331

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[14] See, e.g., Clear Oil & Gas Co. v. Fort Smith Smelter Co., 148 Ark. 260, where the Court held that contracts executed while the Seller even contemplated becoming a public utility ". . . constituted, in effect, an invasion of the public right . . .".

(1956) and *Federal Power Commission v. Sierra P. P. Co.*, 350 US 348 (1956).

In Mobile, the question was whether, under the Natural Gas Act, a regulated natural gas company furnishing gas under a long-term contract, could change the rate by filing a new rate schedule, against the protests of the purchaser.

The provisions of the Natural Gas Act, at issue in the Mobile Case, *supra*, were somewhat similar to the Arkansas laws dealt with by the Arkansas Court in the Harrison Case, *supra*. The United States Supreme Court, however, reached a somewhat different result. It held that the filing provisions in the Natural Gas Act did not confer new powers on gas companies which enabled them to unilaterally change contracts. The Court found that no impairment of the regulatory power of the Commission was effected. By preserving the integrity of contract to this extent the Natural Gas Act, as construed, reached the objectives set out in the Emergency Clause of Act 4; i.e., to permit the stability of supply arrangements and to allow industrial users to make substantial investments they would be unwilling to make without long-term commitments from the Seller. The Court observed that such commitments could not be made if the contracts were subject to unilateral change by the natural gas company whenever its interest so dictated.

However, the Court made it plain that denying to gas companies the power to unilaterally change contracts "in no way impairs the regulatory powers of the Commission, for the contracts remain fully subject to the paramount power of the Commission to modify them when necessary in the public interest."

The relief avenue for gas companies was held to be

through the Federal Power Commission. The gas companies could initiate proceedings to obtain relief from their own contracts and furnish any relevant information showing the contract rates are so low as to be in conflict with the public interest.

The parallel between the Mobile Case and the Arkansas practice is a reasonable explanation of why the Legislature deemed Act 4 to be the method by which Arkansas cases such as Harrison, *supra*, could be clarified, and industries given protection. Prior to Act 4, long-term contracts were of questionable value to the parties entering into the contract, and a gas company conceivably could unilaterally change its contract rates. After Act 4, if the Commission approved a contract, it became binding and enforceable as between the parties. As the United States Supreme Court noted in the Mobile Case, *supra*, adequate certainty was given industry to enable it to make large investments by this protection, and it was neither necessary, reasonable, nor intended, that regulatory agencies be bound by such contracts.

C. THE SHORTCOMINGS OF NEGOTIATED CONTRACT RATE MAKING

There are presently 48 separately negotiated industrial contracts on file with this Commission. The price, escalation clauses and other provisions in these contracts vary widely regardless of the fact that the service rendered is essentially the same. The prices set forth in the contracts vary from .2675c per Mcf to .4025c per Mcf. Neither the volume delivered, the end use of the gas purchased, nor the interruptibility of deliveries explain these price variances. Moreover, large contributions in aid of construction were exacted from some industrial customers before they could

obtain service from Arkla, "as a matter of policy," and without a showing of the economic feasibility of the project.[1] "Negotiation," in the context of utility services, apparently is a process whereby customers may be treated differently where no rational basis for such distinction is apparent.

The Commission's overriding obligation to the public is such that it can no longer assume that because Arkla and its industrial contract customers were at one time satisfied with the results of their negotiations, that the public interest is presently served by these contracts. The contracts, in the main, were negotiated and approved when there was no thought by Seller, Buyer, or the Commission, that the apparent abundant supply of gas would not continue into the indefinite future. Decisions of Arkla's management, its industrial customers, and this Commission were premised on near-term facts as they then appeared and an assumption of a never diminishing supply of natural gas. This assumption is now conclusively proved to be erroneous.

Under the aegis of negotiated contracts there is no forum or procedure for the Commission or the Commission Staff to look at the entire picture and to take action when necessary to protect the interest of other customers of the utility from adverse consequences which may be brought about by the negotiated contract terms under changing conditions and circumstances.

For the Commission to stand idly by and allow the agreements between Arkla and its customers to dictate the extent to which the diminishing available supply of natural gas for which there is no economic and practical alternatives, will be made available to the people of the State of Arkansas and the manner of its distribution would, in our

[1] An example is the OlinKraft Contract dated June 25, 1969, and approved by the Commission in Docket No. U-2221.

judgment, be an abdication of the Commission's responsibility which would lead to disaster. The obligation and responsibility of this Commission under the Arkansas Statutes forbids such inaction on our part.

D. ARKLA'S PROPOSAL TO ADOPT A TARIFF IN LIEU OF INDIVIDUAL INDUSTRIAL CONTRACTS

Arkla filed a proposed tariff (Exhibit 13) applicable to Large Industrial Customers designated as "P.S.C. Schedule Number 4" and consisting of Original Sheets 1-15 inclusive. P.S.C. Schedule Number 4 provided for (a) Statement of Availability, (b) List of Customers, and (e) Form of Service Agreement. It also included the following:

RATE: "The unit price per Mcf for gas delivered hereunder shall, as to each purchaser, be the unit price per Mcf specified in that customer's superseded contract previously in effect, complete with all price adjustments applicable under the contract, except that there shall be no price adjustment, penalty or payment of whatever kind for any curtailments of interruptions in the supply of gas."

Arkla's proposed P.S.C. Schedule Number 4, as Arkla's case was presented, would supersede the industrial contracts in their entirety in the event the Commission "set aside" its prior approvals of said contracts, save for the foregoing "rate" clause, which preserves existing unit prices and omits penalty provisions. Specifics of gas delivery for each customer would be set out in the Service Agreement.

When the Commission held in an earlier case[1] that a

[1] Docket No. U-2297, **In the Matter of the Application of Arkansas Louisiana Gas Company for the Curtailment of the Supply of Gas to its Industrial Customers.**

curtailment priority list proposed by Arkla was discriminatory on its face and that the prices in the contracts negotiated between Arkla and its industrial customers did not provide any necessary relationships between curtailment priorities and prices to be paid for gas, it recognized that at some time prices and supply priorities must be related. The instant proceeding fell short of accomplishing this goal. However, the record is complete as to provisions in three of its existing industrial contracts which Arkla contends would represent a substantial financial burden in view of future anticipated curtailments of deliveries under such contracts.[2]

Arkla's proposed tariff to increase the minimum bills of its industrial customers above the levels provided in the individual industrial contracts. In addition, Arkla proposed to effect a uniform adjustment for the heat content of the gas it delivers which represents a deviation from the existing heat content provisions of most industrial contracts.

Based on consideration of the evidence, the Commission concludes that justification has not been shown on this record for increasing the minimum bills of industrial customers to the level proposed by Arkla, nor does the evidence support any change in the minimum bill level. While a uniform heat content adjustment provision is desirable, it is deemed that because of the relationship between this proposed adjustment and the prices per Mcf set forth in the contracts to which it is applicable, no sound basis exists in this record for Commission acceptance thereof.

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[2] The purported rate adjustment provision in the Continental Oil Company Contract was not filed with or approved by the Commission, thus only two existing contracts with Arkansas Power & Light Company contain a rate provision requiring payments to Arkla in the event of curtailments exceeding 3 percent on an annual basis.

The evidence submitted by Arkla as to the potential effect of the price adjustment clause due to curtailment of deliveries of gas to Arkansas Power & Light Company at that company's Helena No. 2 and Lake Catherine No. 4 steam electric plants below 97% of the gas requirements of such plants, conclusively shows that the large curtailments which Arkla claims will occur in the future would seriously impair, if not destroy, the ability of Arkla to attract the capital necessary to provide the additional gas supply essential to the welfare of the people of Arkansas.[3] Moreover, such price adjustment clause is unduly discriminatory and preferential as regards to other customers of Arkla. Therefore, dominant considerations of the public interest impel the Commission to exercise the police power delegated to it by the Legislature and to set aside and nullify such price adjustment provisions.

Arkla has submitted a curtailment program as a component part of its proposed General Terms and Conditions. Its curtailment plan for large industrial customers differs in several respects from the curtailment plan submitted to the Commission in Docket No. 2297 and also from the provisions incorporated in most of the special industrial contracts which typically read as follows:

> "This service is interruptible to the exent necessary to supply human needs domestic and commercial consumption and such small industrials as cannot practically be interrupted without interrupting a parity, insofar as parity can practically be obtained, with service to Seller's other indus-

[3] For the 1971/1972 heating, this payment is estimated at $8,918,000 based on the difference between the cost of gas and the cost of fuel oil. The payment would reach much higher levels in future years unless Arkla is able to augment its gas supply.

trial purchasers of Buyer's class served under substantially similar terms and conditions."

Arkla proposes to supersede the contract curtailment provision by a four step formula based on load classifications. In the first category (A) to be curtailed would be large users of gas for boiler fuel where an alternate fuel can be used. After this load classification had been fully curtailed, category (B) loads would be curtailed. This category consists of large users of gas for fuel or as a raw material where an alternate fuel cannot be used and curtailment would require plant production to be curtailed or completely shut down. A third category (C) includes deliveries to small industrials, regular commercial loads and gas for pilot lights or accessory or auxiliary equipment essential to avoid serious damage to industrial plants. The final category (D) includes the human need users of gas for residences, schools, hospitals, churches and other human needs customers. It is not contemplated that this classification will be curtailed absent a Force Majeure catastrophy.

While the industrial customer respondents fully recognized the priority of human needs over their use of gas for industrial purposes, a number of objections were made to Arkla's curtailment proposal. In general these objections centered on Arkla's past administration of the existing contract provisions as to interruptibility and their fear that with massive curtailments in the offing, Arkla's curtailments would not be made on a parity basis. Criticism was made of Arkla's failure to curtail its deliveries to Mississippi River Fuel Corporation and Cities Service Gas Company to the extent permitted by its contracts with the two interstate pipeline companies to the detriment of Arkansas industry. As mentioned earlier, Arkla's proposal curtail-

ments of such deliveries are presently subject to a proceeding before the Federal Power Commission, and the curtailment policy laid down by this Commission in the instant Order requires, to the limited extent possible under the Commission's jurisdiction, fairness to all of Arkla's customers.

Reference was also made in the record to Arkla's failure in the past to curtail at all or to curtail on a parity basis certain industrial concerns owned by Arkla or its subsidiaries. However, the most serious issue concerning Arkla's curtailment proposal involves its application to Arkansas Power and Light Company which is Arkla's largest single customer, buying approximately 40% of the Company's total sales of gas for industrial use.

Most of the gas purchased by AP&L from Arkla is burned under boilers to generate electric energy in four plants (11 units) having an installed capacity of 2,056,000 kilowatts and representing approximately 87% of its total generating capability. A small portion is utilized in two gas turbine generating plants having an installed capacity of 91,000 kilowatts.[4] In 1970 approximately 90% of the Company's electric energy output was generated in its own plants, the balance being purchased from affiliated and non-affiliated utilities.

Arkansas Power & Light has installed equipment to burn No. 6 oil as standby fuel at all of its steam electric plants which are now using gas supplied by Arkla and has provided limited fuel storage facilities. These alternate

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[4] Balance of generating capacity consists of the Moses steam plant of 144,000 kw supplied with gas by Texas Gas Transmission Company, hydro generating plants of 69,000 kw installed capacity and a diesel plant of 6,000 kw installed capacity (AP&L Exhibit No. 22.).

fuel installations have been adequate to take care of the short term curtailments imposed by Arkla during the past winter heating seasons when the demands for gas for space heating purposes has required curtailment of industrial customers. The growth in the burning of fuel oil by AP&L in the past six years because of curtailments has been phenomenal, as is illustrated in footnote No. 5

Evidence was offered by AP&L that the alternate fuel equipment presently installed in the generating stations supplied by Arkla is not designed for continuous long term operations, that its prolonged use results in the accumulation of soot with consequent reduction in boiler efficiency and increases in operation and maintenance costs, and requires more frequent shutdowns of boilers and generating units.

It is alleged by AP&L that it would require two years' time to install oil burning equipment designed for continuous long term use at a cost of approximately $50,000,000 and would involve extensive plant down-time. AP&L has under construction a nuclear generating plant near London, Arkansas, with two units having an aggregate capability of 1,780,000 kilowatts. The first unit is estimated to be placed in service in 1973 and the second unit in 1975. While this nuclear installation will reduce AP&L's dependence on natural gas for generating the bulk of its electric energy supply, it does not solve the immediate problem of gas curtailments facing AP&L.

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[5] AP&L Exhibit No. 27:

1965	1,746	barrels
1966	14,277	"
1967	26,567	"
1968	128,548	"
1969	238,880	"
1970	541,276	"
12 months ended Feb. 1971	1,000,000	" (approximately)

Arkansas Power & Light Company takes the position that since approximately 58% of its energy requirements are to supply the human needs requirements of its customers which are just as essential as the human needs requirements of Arkla's customers, it should be given a higher priority of service than other industrial customers when gas curtailments become necessary. The 58% as determined by AP&L is based on the requirements of its own retail domestic and commercial customers (41.5%) and its estimate concerning the same class of customer supplied with power sold to its resale customers (16.1%).

The responsibility of this Commission to protect the interest of ultimate consumers of utility services is not confined to gas customers as Arkla seemed to assume throughout this proceeding. On the other hand, "fairness in rates and conditions of service" is not to be construed as a standard which favors a utility customer over other vital industries.

It is no answer to the problem faced by AP&L from Arkla's estimated massive curtailments to point to the interconnections which AP&L has with other utilities and to simply assume that large volumes of electric energy will flow to AP&L whenever it desires to purchase same. AP&L will purchase energy to the extent it is available but the record does not show the existence of any excess firm capacity on the systems of such interconnected utilities which would permit AP&L to secure power whenever Arkla curtailed its supply of gas. Moreover, the evidence reveals the great difficulty inherent in the present highly competitive market of securing large quantities of low sulphur fuel oil at any price. The problems of transportation and of oil storage faced by AP&L is also acute.

The above evidence makes it clear that the utmost con-

sideration must be given to the proposal of AP&L for assuring continuous service to human needs requirements of its residential and commercial customers. Arkansas Power & Light Company experiences its peak demand for electric energy in the summer months, due to its air-conditioning load, while Arkla's peak demand for gas occurs in the winter months. For the five months May through September, 1970, AP&L experienced an average maximum demand of 2,162,200 kilowatts compared with an average maximum demand for the other seven months of 1,545,600 kilowatts. The kilowatt hours of energy output follow a similar pattern.

In 1970, curtailments of gas supply in Mcf by months as determined by AP&L and percent of annual curtailment by months are as follows:

January	3,209,140	22.76	July	None	0.00
February	2,108,057	14.95	August	None	0.00
March	668,892	4.74	September	281,135	1.99
April	221,943	1.57	October	3,800	0.03
May	28,190	0.20	November	2,749,683	19.50
June	None	0.00	December	4,829,002	34.26

Total curtailments represent 13.74% of desired annual requirements in 1970, however, of the total annual curtailments, only 2.19% occurred in the months of May through September. The evidence for the year 1971 indicates annual curtailments will aggregate 37.87%. During the 1971/1972 heating season, normal peak day curtailments of industrial load is estimated to reach 80% of requirements.

The evidence is convincing that it is necessary in the public interest to place the curtailments of AP&L's gas supply on a more restricted basis than other boiler fuel customers who can use alternate fuels. In coming to this con-

informed of his particular classification and to be placed in a position to compare his classification with the classifications determined by Arkla for other customers. To accomplish these objectives, the prescribed curtailment rule provides that relevant information will be made available to Arkla, to the customers and to the Commission. Customer information on which curtailment classifications will be made must be furnished to the Commission as well as to the Seller. The Seller will give to the customer and to the Commission a copy of its determination of each customer's load classifications, and the amount of daily load required by such customer in each such classification.

The Commission recognizes that the day-to-day administration of a curtailment schedule must depend on Arkla's managerial judgment consistent with policies set forth herein. However, it is incumbent on Arkla's management to exercise such judgment on the basis of objective criteria to the end that the public interest will be served. The Commission intends to exercise its prerogative to review management judgments in this area and to aid it in doing so, Arkla must maintain certain records and make periodic reports of curtailments to the Commission.

Aside from the matter of curtailment priorities, the evidence submitted by Arkla and other Respondents concerning Arkla's proposed General Terms and Conditions necessitates certain modifications and amplifications thereof. These changes are necessary to achieve the desired objectives of clarity, simplicity, completeness, and technical accuracy. It was recognized by Arkla's witness, J. N. Clayton, that certain modifications of the proposed General Terms and Conditions could be appropriately made by the Commission.

Because of the various and differing provisions of the

49 large industrial tariffs the Commission found it most difficult to achieve absolute uniformity without impinging, to some degree, upon substantive related pricing provisions of the Tariffs. In two instances such provisions appeared to be of such importance to the Buyers and, so intimately related to the pricing provisions, as to warrant exemptions pending further order of the Commission in a subsequent proceeding. However, the Commission is of the opinion that the General Terms and Conditions, hereinafter prescribed, are fair, reasonable and non-discriminatory in respect to all Large Industrial Customers and to Arkla, insofar as it is practical to achieve the same based on the evidence in this proceeding.

In order that Large Industrial Customers may be informed of their right to secure a review by the Commission concerning Arkla's administration of the prescribed General Terms and Conditions in instances where a dispute may arise, we have included in such General Terms and Conditions a notification in respect to such right.

E. COST OF SERVICE EVIDENCE AND FUTURE GAS COSTS

Throughout the course of these proceedings and in its Brief, Arkla has stressed the necessity of securing higher prices for the gas sold to industry to overcome the higher unit cost of gas to be secured from its proposed Anadarko pipeline project. For the purpose of demonstrating the substantially higher unit cost of gas that must be paid by Arkansas rate payers, Arkla witness Edward N. Henderson sponsored Exhibit 19. This Exhibit shows the basis for an estimated increase in the average weighted field cost of gas from the 1969 level of 18.8c by 4.25c per Mcf in 1971, with additional increases to 11.21c per Mcf in 1974. Estimated

maximum increases for the industrial customers above the 1969 level range from 9.88c in 1972 to 12.58c per Mcf in 1974.

The 1969 level of cost is based on a cost allocation by Arkla's witness D. L. Nicol,[1] which was designed to develop the 1969 total cost of service for the Ark-La-Tex system and the allocated cost of service for the Arkansas industrial customers. The cost of serving the industrial customers was determined by Mr. Nicol to be 25.46c per Mcf against an average revenue from Arkansas industrial customers of 26.62c per Mcf, or 1.16c over the cost of service.

An examination of the evidence concerning the cost allocation presented by Mr. Nicol and rebuttal evidence presented by witnesses for industrial respondents reveals flaws in certain aspects of the former. In error is the use of an average of the winter and summer peaks of Arkla for the purpose of determining the demand allocation factors. This procedure is contrary to the logic and rationale of the peak responsibility allocation method, and Arkla failed to demonstrate why this method should be rejected by the Commission. In the Commission's prior decisions[2] concerning the rates of Arkla, we have used the peak responsibility method, with modifications, to reflect a 50-50 division of the transmission fixed costs between the demand and commodity function. Such division is coupled with the utilization of the coincident maximum

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1 Arkla Exhibit 12

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2 See Re: Arkansas Louisiana Gas Company, PSC Docket No. U-1016 (1955), reported at 10 PUR3d 407; and Re: Arkansas Louisiana Gas Company, PSC Docket No. U-1311 (1961), reported at 40 PUR3d 209. The Commission's decision in the first of these cases was upheld by the Arkansas Supreme Court in **Acme Brick Company v. Public Service Commission,** 227 Ark. 486, 299 SW2d 208 (1957).

demand of the system which occurred in the winter months. This method reflects the utilization of most of the system capacity for human needs requirements, since the industrial sales were being heavily curtailed at that time.

The Commission has not been required, in earlier proceedings, to deal with costs associated with underground storage. Since all storage costs are properly assignable to the demand function and are allocated on the basis of the peak responsibility of each customer class, storage costs should be assigned to industrial service only to the extent that such service was not curtailed during the peak period. Utilization of the summer peak as well as the winter peak has resulted in a large share of underground storage costs being assigned to the industrial loads which are curtailed during the winter peak periods and thus can make no use of stored gas. The result of this procedure has been an overassignment of costs to the industrial customer classification.

In addition to the foregoing deficiencies, industrial Respondents allege other errors in the cost allocation, principally Arkla's treatment of the Federal income tax allowance, inclusion of distribution system purchased gas, inclusion of distribution system losses, use of an excessive rate of return for equity capital, use of an excessive amount for capitalization applicable to the Ark-La-Tex system and the determination of the unit value of company produced gas. The Commission finds no reason to evaluate all of such purported deficiencies since it is not necessary for the purpose of this decision to make final judgments, reduced to specific dollar amounts, on cost allocation results. It is sufficient justification for the instant Order that the record conclusively demonstrates that cost allocation principles should have been but were not observed in negotiating industrial contracts, that the impact of costs shifts with

time and unforeseen developments, and the failure of contract terms to reflect this consideration makes discrimination between industrial and other customers inevitable. As gas costs increase, as they almost certainly will, this discrimination will be pronounced. A proper cost allocation study will be essential at some time in the future, when the Commission is faced with the problem of dealing with the justness and reasonableness of all of Arkla's rates.

The evidence establishes that Arkla has been engaged in renegotiating upward the prices set forth in most of its industrial contracts (many successfully) and that such renegotiations have proceeded along the line of securing price increases for the purpose of defraying costs attributable to the Anadarko project. These costs appear principally to be those incurred by Arkla's producing subsidiary Arkla Exploration Company in developing gas reserves in the Deep Anadarko Basin. Inasmuch as the gas expected to be purchased by Arkla from Arkla Exploration Company will undoubtedly reflect all of the latter's costs, or the fair market value, or the FPC area price, no compelling reason was given in this proceedings for the recovery of such costs or a portion thereof through sales being made to Arkla's customers prior to gas from the project being delivered to them. Nor is there evidence that the industrial customers are unwilling to shoulder their fair share of the cost of the Anadarko gas whenever it is made available to them. On the other hand, the Commission must be in a position to insure that they do.

It should also be emphasized that only the rates set out in the Large Industrial Tariffs hereinafter specified will be the lawful rates to be charged by Arkla. Hereafter, such tariff rates may be charged only in strict compliance

with the Laws of Arkansas and the Rules and Regulations of this Commission.

Unreasonable discrimination presently exists in the industrial contracts with respect to prices and other provisions. By this Order, the Commission commences to eliminate those discriminatory results of negotiated contracts which the record reveals to be injurious to the public interest. Other adjustments appear to be required, and the Commission intends to institute formal proceedings for the purpose of determining just and reasonable rates for gas supplied to industrial customers under the Large Industrial Tariffs of Arkla, and to thereafter prescribe uniform rates for gas sold by Arkla to industrial customers with similar service characteristics and appropriate and fair additions to the Terms and Conditions controlling such service.

F. FINDINGS

In addition to the conclusions heretofore expressed, the Commission further finds:

1. It is in the public interest that the natural gas available to Arkla for sale to the people of Arkansas be utilized for the greatest good of the greatest number of people. To secure this objective, the Commission must exercise continuing surveillance of all of Arkla's gas sales.

2. After examination of the individual and collective impact on Arkansas' people and industry of the Commission's procedure whereby Commission approval was given, by Order, to contracts privately negotiated between Arkla and large industrial gas customers, the Commission finds that such procedure:

(a) has been, is now, and will be, fatally inflexible

and unresponsive to changes which vitally affect the public interest;

(b) precludes continuing regulatory surveillance and review of the manner in which one of Arkansas' largest public utilities sells some 70% of its increasingly scarce natural gas; and,

(c) would, unless changed, impose future cost increases on certain of Arkla's customers which should be fairly distributed among all customers.

3. The rates, charges, terms and conditions of service contained in the industrial contracts re-examined individually and collectively in this proceedings are unjust, preferential and unduly discriminatory, fail to provide reasonable and non-discriminatory curtailment priorities, and expose residential and commercial customers to probable unjust and disproportionate future rate increases.

4. Protection of the rights of Arkansas citizens who depend upon Arkla for a supply of gas for domestic, commercial and industrial use under conditions of gas shortages necessitating curtailment of deliveries from time to time, requires the adoption and administration by Arkla of reasonable and uniform terms and conditions including a schedule of non-discriminatory and equitable curtailment priorities.

5. The proposal of Arkla to supersede the 48 individual industrial contracts listed on Arkla's Exhibit 13, Original Sheets 9-12, inclusive, with a Tariff designated as P.S.C. Schedule 4, applicable to Large Industrial Customers would, if adopted, result in unjust, unreasonable and unduly discriminatory rates, charges, terms and conditions of service including priorities of curtailment and should therefore be rejected.

6. It furthers the public interest to designate each industrial contract individually and collectively re-examined in this proceedings as a Large Industrial Tariff, subject to the continuing jurisdiction of this Commission.

7. The service rendered under each of said Tariffs should be subject to the General Terms and Conditions Applicable to Large Industrial Customers; appended hereto and made a part hereof as Appendix A, and all provisions of Large Industrial Tariffs should be superseded and replaced by said General Terms and Conditions to the extent that they are inconsistent therewith or contrary thereto.

8. The provision in Section 15 of the Tariffs applicable to the Helena No. 2 unit and the Lake Catherine No. 4 unit of Arkansas Power & Light Company requiring payments to be made by Arkla to AP&L of the differences between the weighted average price per Mcf paid by Buyer to Seller for gas purchased under each Tariff and the weighted average cost of fuel oil burned by Buyer due to curtailments imposed by Seller in excess of three (3) percent of the volumes of gas that would have been delivered during the year if curtailment had not occurred, is unfair to the other industrial customers of Arkla, would adversely affect the ability of Arkla to attract the capital necessary for it to perform its public service obligation and is preferential and unduly discriminatory and should not be permitted.

9. A provision with a similar effect in a "Supplemental Letter" between Arkla and Continental Oil Company was never revealed to the Commission nor submitted for approval, and insofar as the Commission is concerned, is therefore illegal and of no effect. Curtailments to Continental Oil Company should be made subject to this Order and the Appendix thereto. Payments, if any, made by

Arkla pursuant to said undisclosed agreement should be recorded and identified separately by Arkla in its reports to the Commission, and should not be considered a cost attributable to Arkla's utility business.

10. The rates and charges set forth in the aforementioned Large Industrial Tariffs fail to comport with sound rate making principles in that they do not provide uniform rates for the same service nor do the level of the rates in the individual Tariffs reflect any appropriate relationship to curtailment priorities or to the cost of providing the service.

11. The record does not contain the quantum of essential evidence which would permit the Commission to prescribe all just, reasonable and non-discriminatory industrial rates and charges for Arkla and such determinations should be deferred to a subsequent proceeding.

12. It is necessary and appropriate for the purpose of the Commission's performance of its duties and obligations that detailed records of Arkla's reserves, deliverability, and the causes, duration, and identification of those curtailed be available to the Commission's staff, Arkla's customers, and the public.

G. ORDER

In addition to these guidelines and directions heretofore expressed, the Commission further *orders*:

1. Effective today, the Orders issued approving contracts in the Docket Numbers identified below, are hereby rescinded:

COMPANY	DOCKET NO.
Acme Brick Company	U-1961
Aluminum Co. of America	U-1945

American Oil Company	U-2000
Arkansas Chemicals, Inc.	U-1673
Arkansas Elec. Coop. Corp. (Augusta)	U-1819
Arkansas Elec. Coop. Corp. (Augusta)	U-2072
Arkansas Elec. Coop. Corp. (Camden)	U-2070
Arkansas Elec. Coop. Corp. (Ozark)	U-2071
Arkansas Elec. Coop. Corp. (Ozark)	U-1583
Arkansas Kraft Corp.	U-1967
Arkansas Power & Light Company H. Springs, NLR, Stamps	U-1443
Arkansas Power & Light Company Helena	U-1892
Arkansas Power & Light Company Helena	U-1383
Arkansas Power & Light Company Helena	U-2272
Arkansas Power & Light Company Hot Springs	U-2025
Arkansas Power & Light Company Mabelvale	U-2271
Ark: Lightweight Aggreg. Corp.	U-1960
Arkla Chemical Corp. Gurdon	U-1987
Arkla Chemical Corp. Helena	U-1891
Baroid Div., Nat'l. Lead Co.	U-1950
Benton Light Impr. Dist. No. 1	U-1985
Berry Petroleum Co. (Stephens)	U-1952
Berry Petroleum Co. (Waterloo)	U-1951
Bromet Company	U-2192
The Celotex Corporation	U-1986
Columbia Carbon	U-1476
Continental Oil Co.	U-1850
Conway Light, Power & Water	U-2032

Cross Oil & Ref. Co. of Ark.	U-1953
Dierks Div., Weyerhaeuser Co. Pine Bluff & Perkins	U-1983
Dierks Div., Weyerhaeuser Co. Dierks	U-2223
Elk Roofing	U-1984
Great Lakes Chemical Corp.	U-1955
A.P. Green Refractories Co.	U-1963
Ideal Cement Company	U-2269
International Paper Company Pine Bluff, Camden, Malvern	U-1962
MacMillan Ring-Free Oil Co.	U-1947
Magnet Cove Barium (Dresser Magcobar, Div. of Dresser Inc.)	U-1954
Malvern Brick & Tile Co.	U-1948
Minnesota Mining & Mfg. Co.	U-1949
Monsanto Company	U-1444
Monsanto Company	U-2038
Nekoosa Edwards Paper Co.	U-2036
Olinkraft, Inc,	U-2221
Phillips Petroleum Co. and Humble Oil & Refining Co.	U-1966
Remington Arms Co., Inc.	U-2222
Reynolds Metals Co. Bauxite, Lake Catherine & Hot Springs	U-1965
Reynolds Metals Co. Arkadelphia	U-1964
Union Carbide Corp.	U-2037
United States of America Pine Bluff Arsenal	U-1282

and each and every industrial gas sales contract subject to this Order, not limited to the list above, is hereby designated as a Large Industrial Tariff.

2. Each industrial gas sales contract shall hereinafter be identified by that designation, followed by the Docket Number, if any, assigned by the Commission to that Order, if any, issued when the respective superseded contracts were approved.

3. Service under such Tariffs shall be subject to the General Terms and Conditions Applicable to Large Industrial Customers appended hereto and made a part hereof as Appendix A, and also subject to other conclusions, guidelines, and findings in this Order.

4. The subject matter contained in said General Terms and Conditions shall supersede and replace the provisions in each Large Industrial Tariff to the extent that the latter are inconsistent with or contrary to the General Terms and Conditions.

5. The provisions in Section 15 of the Tariffs applicable to the Helena No. 2 unit and the Lake Catherine No. 4 unit of Arkansas Power & Light Company requiring payments to be made by Arkla to AP&L of the difference between the weighted average price per Mcf paid by Buyer to Seller for gas purchased under each tariff and the weighted average cost of fuel oil burned by Buyer due to curtailment imposed by Seller in excess of three (3) percent of the volumes of gas that would have been delivered during the year if curtailment had not occurred, shall hereafter have no force and effect.

6. Arkla shall maintain for a period of not less than five (5) years following the end of a particular calendar year the following records:

(a) Dispatchers daily log sheet showing hourly reports of pressures and volumes.

(b) Dispatchers curtailment work sheets for each day showing curtailments ordered with respect to each customer.

(c) Curtailment date for each day showing for each customer (1) notifications, (2) date and time curtailment started and stopped, (3) percent of curtailment, and (4) Mcf per hour curtailed.

7. Arkla shall hereafter submit to the Commission no later than the 15th day of each month a report for the preceding month which will include the following information applicable to (a) the total Ark-La-Tex integrated system, and (b) the individual non-integrated systems located in the State of Arkansas:

(1) Total volume (Mcf) of curtailments occurring each day of the month (7 a.m. to 7 a.m.) for each load classification specified in Section 12 of General Terms and Conditions appended hereto.

(2) Names of customers curtailed in each load classification, their daily volumetric requirement (Mcf) and volume (Mcf) curtailed for each day and total curtailment (Mcf) for month.

(3) Reason for daily curtailment; i.e., (a) shortage of supply at source, (b) lack of main line or lateral transmission line capacity to serve all customer requirements due to low temperatures or other condition on system or specific portion thereof, (c) necessity to fill storage reservoirs and (d) Force Majeure. In case of Force Majeure describe in detail the cause and general effect of service interruption, the extent of curtailment

necessary, the number of customers affected and the time span of interruption.

(4) System "send-out" in Mcf for each day.

(SEAL)
BY ORDER OF THE COMMISSION
This 9th day of August, 1971.

/s/ Pat Moran, Chairman
/s/ Robert C. Downie, Commissioner
/s/ Don S. Smith, Commissioner

/s/ Robert M. Vaughan, Secretary

APPENDIX A

GENERAL TERMS AND CONDITIONS APPLICABLE TO LARGE INDUSTRIAL CUSTOMERS

1. *DEFINITION OF TERMS*

The following terms when used in these General Terms and Conditions and in each Large Industrial Tariff shall be construed to have the following meaning, except where the context of their use in an Industrial Tariff clearly indicates another meaning:

(a) The term "day" or "daily" shall mean a period of twenty-four (24) consecutive hours, beginning and ending as near as practicable to 7:00 a.m., Standard or Daylight time, at the point at which delivery of gas is made.

(b) The term "month" or "monthly" shall mean the period beginning at or as near as practicable to 7:00 a.m., Standard or Daylight time, on the first day of the calendar month and ending as near as practicable to 7:00 a.m., on the first day of the next succeeding calendar month.

(c) The term "year" shall mean a period of three hundred sixty-five (365) consecutive days beginning on the date specified in the Industrial Tariff as the commencement of the terms of service or initial delivery of gas thereunder or any anniversary thereof; provided, however, that any year which contains a date of February 29 shall consist of three hundred sixty-six (366) consecutive days.

(d) The term "cubic foot" shall mean the volume of

gas which occupies one (1) cubic foot when said gas is at a temperature of sixty degrees (60°) Fahrenheit, and at a pressure of 14.9 pounds per square inch absolute.

(e) The term "Mcf" shall mean one thousand (1,000) cubic feet of gas.

(f) The term "BTU" is the abbreviation employed to denote a British Thermal Unit.

(g) The term "Large Industrial Customer" shall mean those industrial customers which consume gas for manufacturing, generation of power, processing, preparation of product or other industrial purpose and are served under Sellers Large Industrial Tariffs.

2. *USE OF GAS*

Gas delivered by Seller to Buyer is for Buyer's own use and shall not be resold.

3. *BILLING AND PAYMENT*

Seller's monthly bills will be rendered promptly after the close of each calendar month and shall be paid within 15 days after the date of which the bill was rendered at the address designated under Section 13 hereof. Upon default in payment for a period in excess of 30 days after payment is due, Seller may suspend delivery of gas until satisfactory credit arrangements have been made. Seller may require as a condition of commencement or continuation of service a reasonable refundable deposit or bond or increase in an existing deposit or bond at any time to secure payment of bills, such deposit not to exceed an amount equivalent to two estimated maximum bills. Interest at the rate of six percent (6%) per annum or as may be other-

wise prescribed by law or this Commission shall be paid on such deposit amount.

4. *MEASUREMENT*

Except as may be otherwise specifically required by law, the measurement and testing of gas delivered and received hereunder shall be in accordance with the following:

(a) The unit of volume shall be 1,000 cubic feet of gas (Mcf) at a temperature base of 60° Fahrenheit and at a pressure base of 14.9 pounds per square inch absolute. Whenever the actual conditions of pressure and temperature of the particular gas stream being measured differ from the above standard, conversion of the volume from such actual conditions to the above standard conditions shall be made in accordance with the Ideal Gas Laws, corrected in every instance for supercompressibility in accordance with the method customarily used by Seller in computations which are subject to the Standard Gas Measurement Law of the state in which the gas is delivered.

(b) Measurements of gas shall always be in accordance with the requirements of law, and if the procedures, bases, or standards herein contemplated to be used in the determination of gas volumes are changed by law or regulatory action, then the applicable rates shall be appropriately modified and adjusted to the extent necessary to the end that calculations to determine sums of money due Seller for the gas after the change will reach the same end result in dollars and cents as would have been reached in the absence of such change.

(c) Seller shall install, operate and maintain at its own expense appropriate equipment at or near point of delivery to measure and determine volumes delivered. Orifice meters, if used, shall be installed and operated, and volumes computed, in accordance with the American Gas Association Gas Measurement Committee Report No. 3, dated April, 1955, and Appendices thereto and amendments thereof.

(d) The temperature of the gas at each point of delivery shall be, (i) determined by taking the average of the hourly readings of an indicating thermometer; or (ii) assumed by mutual agreement to be 60° Fahrenheit, or (iii) determined by recording thermometer, provided that, if Seller is not using a recording thermometer, Buyer shall have the right, by reimbursing Seller the cost of the equipment and its installation, to require the use of a recording thermometer, the equipment to be owned and operated by Seller.

(e) The specific gravity of the gas shall be determined for each point of delivery in accordance with good engineering practice as often as found necessary in actual operation.

(f) Seller shall install, own, operate and maintain standard type measuring and testing equipment necessary hereunder and shall keep same accurate and in repair. Readings, calibrations, tests, repairs and adjustments of said equipment, and changing of charts, shall be done only by employees or agents of Seller and in accordance with good engineering practice as often as found necessary in actual operation. Buyer shall have access to Sell-

er's measuring and testing equipment including recording calorimeters at any reasonable time, and shall have the right to have a representative present at tests, calibrations and adjustments thereof. Upon request by Buyer for a special test of any meter or auxiliary equipment, Seller shall promptly verify the accuracy of same, provided that the cost of such special test shall be borne by Buyer unless the percentage of inaccuracy is found to be more than two percent (2%). If upon any test the total inaccuracy resulting from meter errors and errors in auxiliary equipment, including recording calorimeters exceeds two percent (2%), then previous readings shall be corrected to zero error for the period of time during which the equipment was known to be inaccurate, or if not known then not beyond the close of the preceding accounting month; if said total inaccuracy is not more than two percent (2%), then previous reading shall be considered correct but the equipment shall be adjusted to read correctly. Seller shall not be required to verify the accuracy of such equipment more than once in any 90 day period.

(g) If any meter or auxiliary equipment is out of service or out of repair for a period of time so that the amount of gas delivered cannot be ascertained or computed from the reading thereof, then the gas delivered during such period shall be estimated upon the basis of the best data available, using the first of the following methods which is feasible: (i) by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculations; (ii) by using the

registration of any check equipment installed and accurately registering; or (iii) by estimating the volume on the basis of deliveries during preceding periods under similar conditions when the equipment was registering accurately.

(h) Upon request, Seller shall submit its measurement charts and records to Buyer for examination, the same to be returned within 20 days. Seller's measurement charts and records for a given accounting month shall be conclusively presumed correct if no written objection thereto is served on Seller within the 12-month period following the given accounting month. Seller shall preserve for a period of at least three years all test data, meter charts and other similar records.

(i) Buyer may install, operate and maintain, at Buyer's own cost, risk and expense, but in the same manner as is required for Seller's equipment hereunder, check measuring and testing equipment of standard type, provided that the same does not interfere with the operation of Seller's equipment, but the measurement and testing of gas for purposes of this rate schedule shall only be by Seller's equipment. Seller shall have the same rights with respect to check equipment as Buyer has with respect to Seller's equipment.

5. *WARRANTY OF TITLE TO GAS*

Seller warrants that it will at the time of delivery have good title to all gas delivered by it to Buyer, free and clear of all liens, encumbrances and claims whatsoever, that it will at such time of delivery have good right and title to sell said gas as aforesaid, and that it will indemnify Buyer

and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties, taxes, license fees or charges therefor, which are applicable before the title to the gas passes to Buyer.

6. *DELIVERY, POSSESSION OF GAS AND RESPONSIBILITY*

(a) The point of delivery, where title to and responsibility for the gas shall pass to Buyer, shall be at the outlet of Seller's metering facilities to be installed and operated by Seller at the point designated in the Tariff. Seller shall have access to Buyer's premises at any reasonable time for any purpose connected with this service.

(b) Seller shall install, operate and maintain whatever facilities are necessary to deliver the gas at the point of delivery and shall indemnify Buyer and hold it harmless from and against any and all claims, actions, suits, damages, liabilities, costs and expenses arising out of use, possession or presence of the gas before it passes the point of delivery. For a new service, construction of Seller's delivery facilities shall commence as soon as the necessary materials and rights of way are available and all regulatory approvals and authorizations required by law, if any, have been obtained on conditions satisfactory to Seller.

(c) Buyer shall install, operate and maintain at its own expense whatever facilities are necessary to safely receive and utilize the gas at and beyond the point of delivery, and shall indemnify Seller and hold it harmless from and against any and all

claims, actions, suits, damages, liabilities, costs and expenses arising out of the use, possession, or presence of the gas after it passes the point of delivery.

7. *SEPARATE PREMISES*

Separate customer premises shall be metered and billed separately even under common ownership, and combined metering or billing shall not be permitted. Such premises shall be considered separate when not on the same tract, or contiguous tracts, of land or when each is a complete "unit", not physically integrated with or essentially a part of the other, or others, and each renders a complete service or produces a finished product. Tracts of land separated by public streets, roads, or alleys are presumed to be non-contiguous tracts.

8. *DELIVERY PRESSURE*

Gas will be delivered at the point of delivery at such pressure as may be mutually agreed upon but not greater than line pressure and such pressure shall be stated in the Tariff. The Customer agrees to properly handle and regulate the pressure of the gas after delivery to it by the Company at the point of delivery.

9. *QUALITY*

(a) Heating Value of Gas

Gas delivered will contain not less than 950 British Thermal Units (BTU) per cubic foot. Buyer shall not be required to accept natural gas having a unit heating value of less than 900 BTU. The average heating value of the gas delivered by Seller shall be determined by the use of a reliable calorimeter located at such place or places on its transmission system as Seller may

select. Adjustments, if any, for deviation from 950 BTU will be made in accordance with Tariff provisions, pending further order of the Commission.

(b) Other Quality Requirements

The gas delivered must contain not more than 1 grain of hydrogen sulphide per 100 cubic feet and not more than 20 grains of total sulphur per 100 cubic feet. The gas must be clean, dry, and merchantable and commercially free of dust or other solid or liquid matters, which might cause injury to or interference with proper operation of the customers' appliances. Seller shall use its best efforts consistent with the prudent operation of its pipeline system to deliver gas meeting the foregoing specifications, but Seller does not undertake to guarantee the supply to Buyer of gas meeting the requirements of this paragraph and shall not be liable in damages for failure to do so.

(c) Buyer shall not be obligated to receive any gas tendered for delivery which does not meet the foregoing specifications and shall have the right to terminate its obligations to take service if Seller does not bring the gas up to specifications within 30 days after written notice from Buyer that it is below specification; provided, however, that Seller will honor quality provisions of existing Tariffs that are more favorable to Buyer pending further Order of the Commission.

10. *ODORIZATION*

It is not contemplated or intended that Buyer will use gas for any purpose requiring odorization under State or Federal laws. Buyer shall be responsible for any such other use of the gas requiring odorization and for compliances

with any and all laws and rules and regulations of regulatory authorities with jurisdiction regarding odorization. Buyer shall indemnify Seller and hold Seller harmless from and against any and all damages, liabilities, and claims arising out of Buyer's failure to comply with the undertakings of this paragraph.

11. *FORCE MAJEURE*

The obligations of the parties (other than to make payments due) shall be suspended so long as and to the extent that performance is prevented by fire, labor disputes, acts of God, the elements, wars, epidemics, riots, civil disturbances, explosions, breakage of, accident to or repairs, tests, or alterations on machinery, equipment, or pipelines, freezing of wells or pipelines, temporary failure of gas supply, and any other cause, similar or dissimilar, not within the reasonable control of the party claiming relief, provided that notice and full particulars of the event relied on will be given in writing or by telegraph to the other party as soon as possible. The party affected shall remedy the cause of suspension with reasonable dispatch, retaining to such party unqualified discretion in settling labor disputes.

12. *CURTAILMENT AND PRIORITY OF SERVICE*

(a) GENERAL

(1) Seller recognizes its public service obligation to maintain gas service to domestic, commercial and other customers for the primary benefit of human needs. In the event Seller may find it necessary, from time to time, in the operation of its systems to curtail or interrupt the delivery of gas to its industrial customers by reason of Force

Majeure or in order to supply human need requirements, curtailment shall be made without liability to Buyer in the order of load classifications set forth in paragraph (b) below.

(2) 100 percent curtailments will be made to Category I loads before any curtailments are made to Category A loads. 100 percent curtailments will be made to Category A loads before any curtailments are made to Category B loads, and etc. Within a category, curtailments of load will be instituted in a simultaneous, fair and equitable manner to the extent practicable based on parity with deliveries to all customers in the same category, with due regard to localized conditions of supply and pressure and to the efficient operation of Seller's system.

(3) "Daily load requirements", as that term is used in the several Load Classifications, means the normal load requirements of the Buyer at the time curtailment is ordered by dispatcher.

(4) Curtailments to Arkansas industrial customers must, insofar as Seller is able, be on a parity with all customers of Seller in like categories.

(b) LOAD CLASSIFICATIONS

CATEGORY I

Customers who purchase gas which is subject to curtailment or interruption at Seller's sole discretion under a

Tariff provision which does not impose an obligation on Seller to sell or on Buyer to buy at any time a fixed volume of gas.

CATEGORY A

Customers who use gas for boiler fuel where alternate fuels can be used, subject to conditions (1) and (2) below. Curtailment percentages will be applicable to 100 percent of the daily load requirements of industrial customers in this category.

(1) Customers in this category and not subject to condition (2) who have neither completed nor substantially completed installation of alternate fuel burning equipment and fuel storage facilities with capacity adequate to meet their daily load requirements at the effective date of this Order, will be classified in Category C during the period September 1, 1971 — August 31, 1972, provided that: such customers submit a written agreement to Seller and to the Commission within 30 days from date hereof to install such equipment and facilities within the above specified period. Failure to submit such agreement will immediately result in placement of customer in Load Classification A.

(2) Public utility customers using gas for boiler fuel to generate electricity for sale will be curtailed only to the extent of 25 percent of their daily load requirements during the months of May through September. For the months of October through April, such customers will be curtailed no more than that portion of demand adequate to generate electric energy for its customers whose use of electricity most nearly corresponds to the uses of natural gas described in Cate-

gories "D" and "E" herein. This proportion shall be presumptively 50% of their daily load requirements during the months of October through April.

CATEGORY B

(1) Public utility customers who use gas for boiler fuel where alternate fuels can be used which have been already curtailed by 25 or 50 percent of their daily requirements under Category A.

(2) Public utility customers who use gas for engine or turbine driven generators where an alternate fuel can be used.

CATEGORY C

Customers who use gas for fuel or raw material or for processing or manufacturing a product and for generating electricity when an alternate fuel cannot be used and operations and plant production would be reduced or shut down completely when gas deliveries are curtailed.

CATEGORY D

Customers whose use of gas in industrial plants for space and water heating, pilot lights or for operating accessory or auxiliary equipment is essential to avoid serious damage to plant installations.

CATEGORY E

Residential and commercial customers whose use of gas is for space heating and cooling, water heating, cooking, lighting, refrigeration and other human need purposes.

(c) CUSTOMERS WITHIN TWO OR MORE CATEGORIES.

If gas delivered to a particular customer is used for

two or more of the herein specified load classifications, curtailment of such deliveries will be based on the requirements of each individual load classification to the extent practicable.

(d) OBLIGATION OF BUYER

Within 30 days after the effective date hereof, or before service commences, or when subsequent changes are made in requirements for gas, all customers subject to curtailment under Load Classifications Categories A, B, C and D will furnish Seller the information reasonably required by Seller with regard to gas usage at the facilities served, in order that Seller may determine the proportionate parts, if any, of the usage falling in the above curtailment categories. Failure to furnish such information will automatically result in the customer being placed by Seller in Load Classification Category I.

13. *NOTICES*

Any notice, request, demand, statement or bill provided for in these General Terms and Conditions and the contracts to which they apply, or any notice which either the Company or the customer may desire to give to the other, shall be in writing and if delivered shall be considered as duly delivered when mailed by registered mail to the Post Office address of the Company or the Customer or at such other address as either shall designate by formal written notice. Routine communications, including monthly statements and payments if delivered, shall be considered as duly delivered when mailed by either registered or ordinary mail.

14. *OPERATING INFORMATION AND FORECASTS*

The Buyer, upon request, shall furnish Seller such reasonable data, in Seller's judgment, as are necessary for the proper analysis of the daily and annual gas load requirements of Customer.

Annually, by September 1 of each year, Buyer shall submit to Seller, by letter, Buyer's best estimate of its daily and annual requirements for the industrial facility, by months, for the following calendar year, for Seller's use in managing its system and forecasting its requirements. In turn, Seller will give Buyer a letter by October 1 of each year containing Seller's best estimate of deliverability of Buyer's requirements and probable curtailments, if any.

15. *COMPANY FACILITIES ON CUSTOMER'S PREMISES*

When gas is connected to a new industrial plant, Buyer will purchase from Seller at its cost all facilities on Customer's premises necessary to effect deliveries to Buyer's plant within 30 days after receipt of Seller's statement following completion of installation. The term "facilities" includes the pipeline, the connecting meter run, separator, regulator and all related facilities necessary to move the gas from the company's pipeline at the property line to the point of delivery and deliver it in accordance with the provisions hereof. The term "cost" includes the cost of pipe, materials, equipment and other facilities, and cost of installation and other related costs. The title to all meters and other facilities and equipment, etc., placed on Buyer's premises, and not paid for by Buyer, shall remain in Seller, with right of removal, and no charge shall be made by Buyer for use of premises occupied by same.

16. *LATERAL LINE POLICY*

The Seller will not be required to extend its pipeline system to furnish service to a prospective Large Industrial Customer or to enlarge its pipeline system to provide for an appreciable increase in the demand of an existing Customer unless it deems such extension or enlargement to be economically feasible in terms of receiving a reasonable return on its expenditure.

17. *GOVERNMENTAL APPROVALS AND AUTHORIZATIONS*

(a) The sale and delivery of gas by Seller is subject to the orders, rules and regulations of duly constituted authorities having jurisdiction over either or both seller and Buyer.

(b) Seller's obligations to render service are subject to its obtaining within a reasonable time an appropriate order or certificate from the Federal Power Commission, when such order or certificate is required to be obtained, on conditions acceptable to Seller, authorizing the construction and operation of the facilities necessary to effect sale of gas to Customer.

18. *RIGHT TO SECURE COMMISSION REVIEW OF ADMINISTRATION OF GENERAL TERMS AND CONDITIONS*

Buyer may submit to the Commission, for its consideration and decision, the subject matter of any dispute concerning the administration by Seller of the General Terms and Conditions.